

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 562

AN ACT to amend the Indiana Code concerning business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 23-14-41-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) In a family burial plot:

- (1) one (1) grave, crypt, or niche may be used for the record owner's interment, entombment, or inurnment;
- (2) after the record owner's interment, entombment, or inurnment, one (1) grave, crypt, or niche may be used for the surviving spouse of the record owner; and
- (3) in the spaces remaining, if any, the parents and children of the deceased record owner, in order of need, may be interred, entombed, or inurned without the consent of any person claiming an interest in the family burial plot.

(b) If there is no parent or child who survives the deceased record owner, the right of interment, entombment, or inurnment in a family burial plot shall go

- ~~(1) first, in order of need, to the spouse of any child of the deceased record owner; and~~
- ~~(2) second, in order of need to:~~
  - ~~(A) (1) the heirs at law of the deceased record owner, or the spouse of the heir if the heir is already interred, entombed, or inurned, as specified by the statutes of descent; or~~
  - ~~(B) (2) the spouse of any heir at law of the deceased record~~

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SECTION 2. IC 23-14-41-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. If a family burial plot has been established under section 3 of this chapter and all the living children and parents of the deceased record owner consent in writing, the status as a family burial plot may be terminated and the remaining lots may be transferred, conveyed, or sold to the cemetery owner or any other person designated in the agreement.**

SECTION 3. IC 23-14-47-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. The fee that a cemetery owner charges for services in connection with the installation or use of commodities in the cemetery shall be the same to all regardless of who furnishes the commodities. ~~However, a cemetery owner may reserve for itself the exclusive right to furnish services in connection with the installation or use of commodities in the cemetery.~~

SECTION 4. IC 23-14-48-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Except as provided in ~~subsection~~ **subsections (b) and (c)**, a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) A person who makes a false or fraudulent representation as to the existence, amount, investment, control, or condition of a perpetual care fund of a cemetery for the purpose of inducing another to purchase any burial right commits a Class C infraction.

**(c) A person who knowingly or intentionally uses funds in a perpetual care fund or an endowment care fund established under this chapter for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment fund was established commits a Class C felony.**

SECTION 5. IC 23-14-57-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this section, **"removal" or "removed"** refers to the disinterment, disintombment, or disinurnment of the remains of a deceased human.

(b) Except as provided in subsection (e) **and sections 4 and 5 of this chapter**, the remains, either cremated or uncremated, of a deceased human shall not be removed from a cemetery without:

(1) a written order:

**(A) that is issued by the state department of health; and**

**(B) that authorizes the removal of the deceased's remains;**

(2) the written consent of:

(A) the owner of the cemetery; or

(B) the owner's representative; and

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(3) the written consent of a person or persons referred to in one (1) of the following clauses, which are listed according to priority:

(A) The individual who was the spouse of the deceased at the time of the deceased's death. or

(B) the parents of the deceased in the case of a deceased minor child;

authorizing the disinterment, disinterment, or disinterment.

(B) The surviving adult child of the deceased. If there is more than one (1) surviving adult child of the deceased, the requirement for written consent under this subdivision is satisfied if:

(i) any one (1) of the surviving adult children provides written consent to the removal of the deceased's remains;

(ii) the consent provided under item (i) confirms that all other surviving adult children of the deceased have been notified of the proposed removal of the deceased's remains; and

(iii) the state department of health does not receive a written objection to the proposed removal from any of the deceased's surviving adult children.

(C) The surviving parent of the deceased. If the deceased is survived by both parents, the requirement for written consent under this subdivision is satisfied if:

(i) either surviving parent provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a written objection to the proposed removal from the other surviving parent.

(D) The individual in the next degree of kinship to the deceased under IC 29-1-2-1. If more than one (1) individual of the same degree of kinship is surviving, the requirement for written consent under this subdivision is satisfied if:

(i) any individual of that degree of kinship provides written consent to the removal of the deceased's remains; and

(ii) the state department of health does not receive a written objection to the proposed removal from any other surviving individual in the same degree of kinship.

(c) Before issuing a written authorization under subsection (b), the

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state department of health shall do the following:

~~(1) Obtain written evidence of the legal ownership of the property from which the remains will be removed.~~

~~(2) Send written notice to the department of natural resources, division of historic preservation and archeology, of the time, date, and place from which the remains will be removed.~~

~~(3)~~ (1) Obtain written evidence that a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reentombment, or reinurnment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal ~~occurred~~: **occurs**.

~~(4) Obtain written evidence that a notice of the proposed removal has been published at least five (5) days before a written order is issued by the state department of health in a newspaper of general circulation in the county where the removal will occur.~~

~~(5)~~ (2) Obtain a copy of:

(A) the written consent required under subsection (b)(3); or

(B) a court order obtained by a person under subsection (d).

(d) If the written consent of

~~(1) the spouse of the deceased; or~~

~~(2) the parents of the deceased in the case of a deceased minor;~~

**an individual authorized under subsection (b)(3) to give consent** is not available, a person who has made a request under this section to the state department of health may petition a court to determine whether to waive the consent requirement of subsection (b)(3). In determining whether to waive the requirement, the court shall consider the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased. In a proceeding under this subsection, the court may not order the disinterment, disentombment, or disinurnment of the remains of a deceased human.

(e) This subsection applies only if the human remains are on property owned or leased by a coal company. The remains, either cremated or uncremated, of a deceased human may be removed from a cemetery by a coal company if the coal company obtains a court order authorizing the disinterment, disentombment, or disinurnment. Before issuing a court order under this subsection, a court must conduct a hearing and be satisfied as to the following:

(1) That the property is owned or leased by the coal company.

(2) That the coal company has obtained the written consent of

~~(A) the spouse of the deceased; or~~

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~~(B) the parents of the deceased in the case of a deceased minor child;~~

~~authorizing the disinterment, disinterment, or disinterment: an individual authorized to give consent under subsection (b)(3).~~ If the consent of an individual authorized to give consent under subsection (b)(3) is not available, the court may waive the requirement after considering the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.

(3) That the department of natural resources, division of historic preservation and archeology, has received at least five (5) days written notice of the time, date, and place of any hearing under this subsection. The notice must describe the proposed place from which the remains will be removed.

(4) That a licensed funeral director has agreed to:

(A) be present at the removal and at the reinterment, reinterment, or reinterment of the remains; and

(B) cause the completed order of the state department of health to be recorded in the office of the county recorder of the county where the removal ~~occurred~~: occurs.

(5) That the coal company has caused a notice of the proposed removal to be published at least five (5) days before the hearing in a newspaper of general circulation in the county where the removal will occur.

(6) That the coal company will notify the department of natural resources, division of historic preservation and archeology, after the hearing of the proposed time and date when the remains will be removed.

(f) A:

(1) licensed funeral director; or

(2) cemetery owner;

is not liable in an action brought by any person because of the removal of a deceased's remains under a written consent described in subsection (b)(3) or (e)(2) unless the licensed funeral director or the cemetery owner had actual notice before or at the time of the removal that a representation made in the consent described in subsection (b)(3) or (e)(2) was untrue.

~~(f)~~ (g) The state department of health may adopt rules under IC 4-22-2 to implement this section.

SECTION 6. IC 23-14-57-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) The remains of a deceased human interred, entombed, or inurned in a plot in a cemetery may be removed from the plot for the purpose of autopsy or

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reinterment, reentombment, or reinurnment in another cemetery with:

- (1) the consent of the owner of the cemetery; and
- (2) the written consent of
  - ~~(A) the surviving spouse in the case of a deceased married person; or~~
  - ~~(B) the surviving parents in the case of a deceased minor child;~~**an individual authorized to give consent under section 1(b)(3) of this chapter.**

(b) If the consent of:

- (1) the owner of the cemetery; or
- (2) a person from whom consent is required under subsection (a)(2);

~~can not~~ **cannot** be obtained, the remains of a deceased human can be removed for the purpose of autopsy or reinterment, reentombment, or reinurnment in another cemetery only under a judgment of the circuit or superior court with jurisdiction in the county in which the cemetery is located.

SECTION 7. IC 23-14-58.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**Chapter 58.5. Disposition of Abandoned Burial Spaces**

**Sec. 1. (a) Subject to this chapter, if a burial space in a cemetery that is subject to IC 23-14-41 or any other Indiana law:**

- (1) has remained unused for a period of at least fifty (50) years from the date of sale or last recorded designation or transfer; and**
- (2) has no improvements on the burial space, including the placement of a monument, memorial, or other permanent appurtenance;**

**the person or entity having jurisdiction over the cemetery may terminate the rights and interests of the owner of the burial space.**

**(b) After July 1, 2007, a contract for the purchase of a burial space must include notice that the contract is subject to termination as provided in subsection (a).**

**Sec. 2. (a) If the person or entity having jurisdiction over the cemetery:**

- (1) desires to terminate the rights and interests of the owner of the burial space; and**
- (2) determines that the conditions specified in section 1 of this chapter have been met;**

**the person or entity must send to the owner a notice of the intent to terminate the owner's rights to the burial space.**

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(b) The notice required under subsection (a) must be sent by certified mail with return receipt requested to the owner's last known address.

Sec. 3. (a) An owner who has received a termination notice under section 2 of this chapter may inform the person or entity having jurisdiction over the cemetery of the owner's continued intent to use the burial space. If the person or entity having jurisdiction over the cemetery has been informed of the owner's intent, the person or entity having jurisdiction over the cemetery may not terminate the rights and interests of the owner of the burial space.

(b) An owner who has received a termination notice under section 2 of this chapter may request the person or entity having jurisdiction over the cemetery to purchase the burial space for the amount originally paid for the burial space.

Sec. 4. (a) If the person or entity having jurisdiction over the cemetery has not received a response from the owner of the burial space within sixty (60) days after sending the notice required in section 2 of this chapter, the person or entity having jurisdiction over the cemetery shall advertise in a newspaper of general circulation in the county of the owner's last known address seeking the owner's current address.

(b) If a new address for the owner of the burial space is obtained after the advertising required in subsection (a), the notice requirement under section 2 of this chapter must be repeated.

(c) If the person or entity having jurisdiction over the cemetery has not received a response regarding the owner of the burial space within sixty (60) days after placing the advertisement required in subsection (a), the owner's rights and interests in the burial space are terminated. After the rights and interests in a burial space are terminated under this chapter, the person or entity having jurisdiction over the cemetery may sell a burial space to a new owner.

(d) If the owner of a burial space contacts the person or entity having jurisdiction over the cemetery after the owner's rights and interests in the burial space are terminated under this chapter, the owner is entitled to select one (1) of the following remedies:

- (1) The original burial space, if it has not been resold.
- (2) If a person or an entity having jurisdiction over the cemetery has resold the burial space, reimbursement for the amount for which the burial space was resold minus the following:

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(A) The costs paid by the person or entity having jurisdiction over the cemetery in providing notice and advertising as required under this chapter.

(B) The sales commission costs in the resale of the burial space.

(3) A comparable burial space in the cemetery.

**Sec. 5. A person who:**

(1) knowingly terminates an owner's rights and interests in a burial space;

(2) knows or should have known the identity of the owner; and

(3) fails to give the owner notice as required under this chapter;

**commits a Class A misdemeanor.**

SECTION 8. IC 30-2-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) **Except as provided in subsection (b),** a person who violates this chapter or makes any false and fraudulent report required under this chapter commits a Class B misdemeanor.

(b) **A person who knowingly or intentionally uses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.**

SECTION 9. IC 30-2-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) **Except as provided in subsection (b),** a person who knowingly violates this chapter commits a Class A misdemeanor.

(b) **A person who knowingly or intentionally uses funds in a funeral trust established under this chapter for purposes other than the purposes required under this chapter commits a Class C felony.**

SECTION 10. IC 34-30-2-91.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 91.2. IC 23-14-57-1 (Concerning licensed funeral directors and cemetery owners for the removal of human remains performed upon authorization of next of kin).**

SECTION 11. IC 34-30-2-91.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 91.3. IC 23-14-57-3 (Concerning cemetery owners for the removal of human remains from a plot, building, or structure for which the purchase price is past due and unpaid).**



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SECTION 12. IC 34-30-2-91.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2007]: **Sec. 91.4. IC 23-14-57-8 (Concerning cemetery owners for the removal or reinterment, reentombment, or reinurnment of human remains).**

SECTION 13. [EFFECTIVE JULY 1, 2007] **IC 23-14-58.5-5, as added by this act, applies only to acts committed after June 30, 2007.**

SECTION 14. [EFFECTIVE JULY 1, 2007] **IC 23-14-48-9, IC 30-2-9-7, and IC 30-2-10-9, all as amended by this act, apply only to acts committed after June 30, 2007.**

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President Pro Tempore

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Governor of the State of Indiana

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